

**FIRST 5 COMMISSION OF SAN DIEGO  
GRANT AGREEMENT  
EXHIBIT C-1 - TERMS AND CONDITIONS**

**1. DUTY OF GRANTEE**

Grantee shall, at its own cost and expense, furnish all of the labor, technical, administrative, professional and other personnel, all supplies and material, equipment, printing, vehicles, transportation, office space and facilities, all tests, testing and analysis, calculations, and all other means whatsoever, except as herein otherwise expressly specified to be furnished by Commission, necessary or proper to perform and complete the work and provide the services required of Grantee in accordance with the approved application.

**2. WORK TO BE PERFORMED BY GRANTEE**

Grantee shall provide its special knowledge, services and skill to perform the work described in the Approved Application, which is attached to this Grant Agreement as Exhibit A, and incorporated by reference.

**3. ADMINISTRATION**

Commission may amend the Grant Agreement or authorize a designated Grant Administrator who shall be the only Commission Official who is authorized to award and amend the Agreement.

3.1. Commission has designated the following individual as the Grant Administrator:

Gloria Bryngelson, Executive Director  
First 5 Commission of San Diego  
1495 Pacific Highway, Suite 202  
San Diego, CA 92101  
Telephone: (619) 230-6460 Fax: (619) 230-6466

3.2. Grantee's Administrators: Grantee has designated the following individual as the Grantee's Administrator:

[Name]  
[Organization]  
[Address]  
TELEPHONE: xxxxxxxx FAX: xxxxxxxxxx

**4. TERM**

The term of this Agreement shall begin on [Beginning Date] and continue through and including [End Date] during which time, Grantee shall perform the services provided in the Approved Application.

**5. COMPENSATION**

Commission agrees to pay Grantee a sum not to exceed \$XXXX.00 (XXXXXXX dollars) for services performed during the term of this Agreement in accordance with the methods of payment set forth in Paragraph 6 of these Terms and Conditions.

**METHOD OF PAYMENT**

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(For grantees receiving up to \$99,999.99)

- Initial payment of \$xxxx.00 (45% of the grant) to be paid no later than 30 calendar days from the execution of this Agreement.
- \$xxxxx.00 (45% of the grant) to be paid [180 days later] by [month] 10, 2003.
- \$xxxxx.00 (10% of the grant) to be paid upon approval of Grantee's Final Report per Paragraph 13.

Note. An invoice shall be submitted from Grantee prior to issuance of all progress and/or final payments per Paragraph 7.

(For grantees receiving \$100,000 and more)

- Initial payment of \$xxxxx.00 (30% of the grant) to be paid no later than 30 calendar days from the execution of this Agreement.
- \$xxxxx.00 (30% of the grant) to be paid [120 days later] by [month] 10, 2003.
- \$xxxxx.00 (30% of the grant) to be paid [210 days later] by [month] 10, 2003.
- \$xxxxx.00 (10% of the grant) to be paid upon approval of Grantee's Final Report per Paragraph 13.

Note. An invoice shall be submitted from Grantee prior to issuance of all progress and/or final payments per Paragraph 7.

## **6. INVOICES**

Grantee shall submit an original invoice to the Grant Administrator. Each invoice shall include or be accompanied with a statement of the services (or products) delivered or to be delivered, and shall refer to the Agreement number.

## **7. CONDITIONS PREREQUISITE TO PAYMENTS**

Notwithstanding any other provision of this Agreement, Commission may elect not to make payments on the Agreement if:

- 8.1 Misrepresentation. Grantee, with or without knowledge, has made any substantial and material misrepresentation of any information furnished to Commission.
- 8.2 Unauthorized Actions By Grantee. Grantee takes any Agreement-related action requiring Commission approval, without having first received said approval.
- 8.3 Reports. Grantee fails to provide reports as required by Subparagraph 13.4 of these Terms and Conditions.
- 8.4 Default. Grantee defaults under any provision of this Agreement.

## **8. AUDIT REQUIREMENTS**

Grantees who receive \$250,000 or more in grant dollars annually from the First 5 Commission of San Diego shall annually engage a licensed, Certified Public Accountant to conduct an annual fiscal audit of their agency's operation funded with First 5 Commission of San Diego dollars. The audit shall be conducted in compliance with Government Auditing Standards. Grantee shall include a clause in any contract or agreement the Grantee enters into with an audit firm to provide access by the Commission or County to the working papers of the independent auditor who prepares the audit for the Grantee. Grantee shall submit two (2) copies of the annual report and the management letter to the Commission no later than fifteen (15) days after receipt from the independent, licensed Certified Public Accountant.

## **9. WITHHOLDING OF PAYMENT**

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Commission may withhold payment until reports required under this Agreement are received and approved by Commission. Commission may also withhold payment if, in Commission's sole opinion, Grantee is not in compliance with this Agreement.

**10. DISALLOWANCE**

In the event Grantee claims and receives payment from Commission for a service, reimbursement for which is later disallowed by Commission or the State of California, or the United States Government, Grantee shall promptly refund the disallowed amount to Commission on request, or at its option. Commission may offset the amount disallowed from any payment due or to become due to Grantee under this Agreement or any other agreement. Similarly, a disallowance under a prior agreement may be offset against this Agreement.

**11. FULL PAYMENT**

Pending any adjustments, each claim so approved and paid shall constitute full and complete compensation to Grantee for the period covered by the claim. It is expressly understood and agreed that this Agreement constitutes the entire agreement of Grantee and Commission and in no event shall Grantee be entitled to any payment, benefits, reimbursements or services other than as herein expressly provided.

**12. NOTICE**

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by certified mail, postage prepaid, return receipt requested, to the Grant Administrator cited in Subparagraph 3.1 and to the Grantee's cited in Subparagraph 3.2.

**13. REPORTING REQUIREMENTS**

Grantee shall be required to provide the following reports to the Grant Administrator unless otherwise specified.

- 13.1. Quarterly written progress reports detailing the status of all funded activities and/or services from the effective date of this Agreement, due on the following dates:
  - *[DATE] for [REPORTING MONTHS] [January 31, 2003 for Oct, Nov, Dec 2002]*
  - *[DATE] for [REPORTING MONTHS][April 30, 2003 for Jan, Feb, Mar 2003]*
  - *[DATE] for [REPORTING MONTHS] [July 31, 2003 for Apr, May, June 2003]*
  - *[DATE] for [REPORTING MONTHS][ October 31, 2003 for July, Aug, Sept 2003]*
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- 13.2. Quarterly written fiscal reports specifying disbursement of grant funds quarterly from the effective date of this Agreement, due on the following dates:
  - *[DATE] for [REPORTING MONTHS][same as above]*
  - *[DATE] for [REPORTING MONTHS]*
  - *[DATE] for [REPORTING MONTHS]*
  - *[DATE] for [REPORTING MONTHS]*
- 13.3. A final written report specifying a summary of activities and accomplishments for the grant period and a fiscal report specifying total disbursement of grant funds for the grant period, due no later than 30 calendar days from the end date of this Agreement.
- 13.4. Grantee shall submit reports as requested by Commission. Format for the content of such reports may be developed by Commission. The timely submission of these reports is a necessary and material term and condition of this Agreement, and Grantee agrees

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that failure to meet specified deadlines will be sufficient cause to withhold payment under Paragraph 8 of these Terms and Conditions.

**14. EVALUATION COORDINATION**

Grantees shall work with and coordinate program evaluation and measures with Commission Evaluation Consultant so that Grantee's data collection and reports will be in alliance with the First 5 Commission of San Diego and State Commission evaluation requirements. In the future this will include implementation of a computerized data system for data collection and reporting.

**15. PUBLIC MATERIALS**

All public announcements, letterheads, and materials distributed to the community shall identify Commission as the funding source for grant-supported services and programs. Commission shall provide the name and/or logo to be used. Grantee will provide to the Grant Administrator a copy of the proposed announcement, letterhead or material with the proposed identifying language while in draft form for the Grant Administrator's approval. Final copies of publicity materials related to grant-supported services and programs shall be provided to Commission.

**16. CULTURAL DIVERSITY**

Grantee shall support Commission's commitment to the provision of services that meet the unique linguistic and cultural needs of the diverse clients to be served.

**17. COMPUTER AND OFFICE EQUIPMENT**

Grantee shall be entitled to retain ownership of any computer and other office equipment identified in the approved budget in Exhibit B.

**18. OWNERSHIP OF MATERIALS**

All materials produced by Grantee under this Agreement, and prior to this Agreement, remain the sole and exclusive property of the Grantee. Likewise, any materials produced by Grantee during the term of this Agreement and which are not paid for by Commission funds remain the sole and exclusive property of Grantee.

**19. POLITICAL ACTIVITIES PROHIBITED**

None of the funds provided directly or indirectly under this Agreement shall be used for any political activities or to further the election or defeat of any candidate for public office. Neither the Agreement nor any funds provided thereunder shall be utilized in support of any partisan political activities, or activities for or against the election of a candidate for an elected office.

**20. LOBBYING**

Grantee agrees to comply with the lobbying ordinances of the County of San Diego ("County") and to assure that its officers and employees comply with all applicable local, state and federal laws and regulations governing advocacy of and appearances before the Commission or the County Board of Supervisors. None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat any legislation pending before State and Federal Legislatures or the County Board of Supervisors.

**21. CONFIDENTIALITY OF RECORDS**

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Commission and Grantee agree to maintain the confidentiality of any information regarding applicants, project participants or their immediate families which may be obtained through application forms, interviews, tests, reports, from public agencies or counselors or any other source. Without the written permission of the applicant or participant, such information shall be divulged only as necessary for purposes related to the audit and evaluation of the Agreement and then only to persons having responsibilities under the Agreement, including those furnishing services to Grantee under a contract. Commission and Grantee agree that all information and records obtained in the course of providing services to project clients shall be subject to confidentiality and disclosure provisions of applicable Federal and State statutes and regulations. However, at Commission's request, Grantee shall permit Commission access to all records and information regarding the project, and confidentiality shall not be a bar to Commission's access to all records and information.

**22. MAINTENANCE OF RECORDS**

Grantee shall maintain and keep available all records within the County for a minimum of five (5) years from the ending date of this Agreement unless Commission or its Grant Administrator agrees in writing to an earlier disposition.

**23. CUSTODY OF RECORDS**

Commission, at its option, may take custody of Grantee's client records upon grant termination. Commission agrees that such custody will conform to applicable confidentiality provisions of Federal and State law. Said records shall be kept by Commission in an accessible location within the County and shall be available to Grantee for examination and inspection.

**24. AUDIT AND INSPECTION OF RECORDS**

At any time during normal business hours, and as often as Commission may deem reasonable, Grantee shall make available to Commission for examination all of its records with respect to all matters covered by this Agreement and will permit Commission to audit, examine and make excerpts of transcripts from such records, and make audits of all invoices, materials, payrolls, records of personal and other data relating to all matters covered by this Agreement. Unless otherwise specified by Commission, said records should be made available for examination within the County. The State of California or any Federal agency having an interest in the subject of this Agreement shall have the same rights to audit and inspect records conferred upon Commission by this Agreement.

**25. TERMINATION OF AGREEMENT FOR CAUSE**

Upon breach of this Agreement, Commission shall have the right to terminate this Agreement, by giving written notice to Grantee of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. As of the effective date of termination, Commission shall not be required to make any further payments to Grantee under this Agreement, regardless of the amount of services or expenditures made by Grantee through the termination date. In the event that Commission terminates this Agreement, it is expressly agreed and understood that Grantee, at the option of Commission, shall assist and advise Grantee's successor to facilitate the period of transition caused by such termination. Commission does not waive its right to demand and pursue reimbursement for any funds provided under this Agreement that were not used pursuant to this Agreement.

**26. TERMINATION FOR CONVENIENCE OF COMMISSION**

Commission may terminate this Agreement at any time by giving written notice to Grantee of which termination and specifying the effective date thereof at least thirty (30) days before the effective date of such termination. As of the effective date of termination, Commission shall not be required to make any further payments to Grantee under this Agreement, regardless of the amount of services or expenditures made by Grantee through the termination date. In the event that Commission terminates this Agreement,

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it is expressly agreed and understood that Grantee, at the option of Commission, shall assist and advise Grantee's successor to facilitate the period of transition caused by such termination. Commission does not waive its right to demand and pursue reimbursement for any funds provided under this Agreement that were not used pursuant to this Agreement.

**27. ASSIGNABILITY**

Grantee shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of Commission or Grant Administrator thereto, provided, however, that claims for money due or to become due to Grantee from Commission under this Agreement may be assigned without such approval. Notice of any such assignment of transfer shall be furnished promptly to Commission.

**28. INTEREST OF GRANTEE**

Grantee covenants that Grantee presently has no interest, including, but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Grantee further covenants that in the performance of this Agreement to person having any such interest shall be employed or retained by Grantee under this Agreement.

**29. INSURANCE**

Without limiting Grantee's indemnification obligations to Commission, Grantee shall provide and maintain, during the duration of this agreement and for such other period as may be required herein, at its sole Expense, insurance in the amount and form described in Exhibit C-2, 'Insurance Requirements', attached hereto.

**30. LICENSES AND PERMITS**

Grantee possesses any necessary licenses and permits required under law and necessary for it to perform those activities for which it is receiving these funds.

**31. DEFENSE AND INDEMNITY**

Neither Commission nor County shall be liable for, and Grantee shall defend and indemnify Commission and County and its officers, agents, employees and volunteers against any and all claims, deductibles, self-insurance retentions, demands, liability, judgements, awards, fines, mechanics' liens, or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (collectively, claims), which arise out of or in any way connected to the work covered by this Agreement arising directly or indirectly from any act, error, omission or negligence of Grantee or its officers, employees, agents, contractors, licensees, or servants, including without limitation, claims caused by the concurrent act, error, omission or negligence, whether active or passive, of Commission, County, its agents, officers, employees or volunteers. However, Grantee shall have no obligation to defend or indemnify Commission or County from a claim if it is determined by a court of competent jurisdiction that such claim was caused by the sole negligence or willful misconduct of Commission or County or its agents or employees.

**32. INDEPENDENT GRANTEE**

Grantee is, for all purposes arising out of this Agreement, an independent Grantee, and neither Grantee nor Grantee's employees shall in any event be entitled to any benefits to which Commission or County employees are entitled, including, but not limited to, overtime, any retirement benefits, workers' compensation benefits, an injury leave or other leave benefits.

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**33. EMPLOYEES AND EQUIPMENT**

Grantee agrees that it has secured or will secure at Grantee's expense all persons, employees and equipment required to perform the services required under this Agreement and that all such services will be performed by Grantee, or under Grantee's supervision, by persons authorized by law to perform such services.

**34. PERSONAL PERFORMANCE**

It is expressly understood and agreed that Grantee shall engage or require the services of no other person or firm, by grantee or otherwise, to provide or assist in providing such services without the express written consent of Commission, provided, however, that this provision shall not apply to secretarial, clerical, routine mechanical and similar incidental services needed by Grantee to assist in the performance of this Agreement.

**35. EQUAL OPPORTUNITY**

Grantees will not discriminate against any employee, or against any applicants for such employment because of age, race, color, religion, physical handicap, ancestry, sexual orientation, sex or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoffs or termination, rates of pay or other forms of compensation and selection for training including apprenticeship.

**36. DISPUTES**

Except as otherwise provided in this contract, any dispute concerning a question or fact arising under this contract which is not disposed of by agreement shall be decided by the Grant Administrator who shall furnish the decision to Grantee in writing. The decision of the Grant Administrator shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious, or arbitrary or so grossly erroneous as necessarily to imply bad faith. Grantee shall proceed diligently with the performance of the grant pending the Grant Administrator's decision.

**37. EXTENSION OF TIME**

Commission may, upon written request of Grantee, extend the time for completion of Grantee's performance of this Agreement upon the time and the terms and conditions mutually agreed to by the parties. Both parties agree that such extension of time does not alter the amount of compensation due Grantee.

**38. FULL COST RECOVERY OF INVESTIGATION AND AUDIT COSTS**

Grantee shall reimburse Commission for all direct and indirect expenditures incurred in conducting an audit/investigation when Grantee is found in violation (material breach) of the terms of the contract. Reimbursement for such costs shall be withheld from any amounts due to Grantee pursuant to the payment terms or the contract, or from any other amounts due to Grantee from Commission.

**39. GOVERNING LAW AND FORUM SELECTION**

This Grant Agreement shall be construed and interpreted according to the laws of the State of California. An action or proceeding brought by any party against any other party arising out of or related to this Grant Agreement shall be brought exclusively in the Superior Court of San Diego County or the United States District Court for the Southern District of California.

**40. COMPLETE AGREEMENT**

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It is expressly understood and agreed that this Agreement constitutes the entire agreement between Grantee and Commission and in no event shall Grantee be entitled to any compensation, benefits, reimbursements or ancillary services other than as herein expressly provided.